

CHAPTER 456

CORRECTIONS

SENATE BILL 21-138

BY SENATOR(S) Coleman, Bridges, Buckner, Danielson, Donovan, Fenberg, Ginal, Gonzales, Hansen, Jaquez Lewis, Kolker, Lee, Moreno, Pettersen, Priola, Story, Winter, Garcia;
 also REPRESENTATIVE(S) Sandridge and Bacon, Amabile, Benavidez, Bernett, Bird, Boesenecker, Caraveo, Cutter, Duran, Esgar, Exum, Gonzales-Gutierrez, Gray, Herod, Hooton, Jodeh, Kipp, Lontine, McCluskie, McCormick, Michaelson Jenet, Ortiz, Ricks, Roberts, Snyder, Valdez A., Valdez D., Weissman, Young.

AN ACT

CONCERNING MEASURES TO IMPROVE THE SUPPORT OF PERSONS IN THE CRIMINAL JUSTICE SYSTEM WITH A BRAIN INJURY, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Legislative declaration. (1) The general assembly finds and declares that:

(a) According to research, an estimated twenty-five percent to eighty-seven percent of inmates report having experienced a traumatic brain injury, compared to approximately eight and one-half percent of the general population;

(b) Research has demonstrated that people under criminal justice supervision with a traumatic brain injury tend to have poorer outcomes, including high rates of recidivism;

(c) Traumatic brain injury can affect a person's ability for self-regulation, planning, organization, judgment, reasoning, and problem solving. Additionally, there may be emotional and behavioral changes after a traumatic brain injury, including increased agitation, depression, and irritability. A report published in August of 2020 by the University of Denver stated that these behaviors are related to a greater risk for involvement in the criminal justice system. In fact, the consequences of traumatic brain injury are often "linked to violence, infractions in prison, poorer treatment gains, and reconviction" as well as "ongoing mental health and drug and alcohol problems".

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

(d) On any given day there are over one hundred thousand people involved in the criminal justice system in Colorado. More broadly identifying and treating people with a brain injury who are involved in the criminal justice system could significantly improve supervision outcomes and reduce recidivism.

(e) The August of 2020 University of Denver report revealed that while the average prevalence of traumatic brain injury history among adults in Colorado jails and problem-solving courts was fifty-four percent, it ranged from twenty-seven percent to ninety-seven percent, depending on the setting. People on probation with traumatic brain injury had lower rates of successful probation completion and were significantly more likely to recidivate than their peers. Female probationers with traumatic brain injury, who tended to have a history of multiple traumatic brain injuries as a result of violent victimization, appeared especially vulnerable to poor outcomes.

(f) The August of 2020 University of Denver report suggests there are four key steps that are the basis for the Colorado traumatic brain injury model that can be applied to support individuals with traumatic brain injury in the criminal justice system so the individuals can successfully complete incarceration or supervision, reenter the community, and avoid recidivism. These steps include training criminal justice staff about the prevalence and consequences of traumatic brain injury; ensuring the criminal justice population is screened for traumatic brain injury and screening those identified with a traumatic brain injury for impairment; tailoring the management of individuals with traumatic brain injury and providing specific strategies to mitigate the effects of the identified impairment; and educating individuals with traumatic brain injury so they may better understand how their traumatic brain injury affects them and how to compensate accordingly.

(2) Therefore, the general assembly declares it is in the best interest of the state to increase awareness of and training surrounding brain injuries for criminal justice professionals, expand screening and identification for people in the criminal justice system who have been identified as having a significant brain injury, and integrate the Colorado brain injury model more broadly throughout the criminal justice system.

SECTION 2. In Colorado Revised Statutes, 17-40-101, **amend** (1); and **add** (1.3) as follows:

17-40-101. Definitions. As used in this article 40, unless the context otherwise requires:

(1) ~~"Correctional institution" means the correctional facilities at Cañon City, the correctional facilities at Buena Vista, or any other institution established for the rehabilitation of male or female offenders. "BRAIN INJURY" HAS THE SAME MEANING AS SET FORTH IN SECTION 26-1-301 (1.5).~~

(1.3) "CORRECTIONAL INSTITUTION" MEANS THE CORRECTIONAL FACILITIES AT CAÑON CITY, THE CORRECTIONAL FACILITIES AT BUENA VISTA, OR ANY OTHER INSTITUTION ESTABLISHED FOR THE REHABILITATION OF MALE OR FEMALE OFFENDERS.

SECTION 3. In Colorado Revised Statutes, **add** 17-40-108 as follows:

17-40-108. Brain injury pilot program - report - repeal. (1) SUBJECT TO AVAILABLE APPROPRIATIONS, THE DEPARTMENT SHALL IMPLEMENT THE BRAIN INJURY PILOT PROGRAM, REFERRED TO IN THIS SECTION AS THE "PILOT PROGRAM". THE PURPOSE OF THE PILOT PROGRAM IS TO EVALUATE OUTCOMES FOR INDIVIDUALS WITH A BRAIN INJURY WHO RECEIVED SCREENING AND SUPPORT WHILE IN THE CRIMINAL JUSTICE SYSTEM. AS A PART OF THE PILOT PROGRAM, THE DEPARTMENT SHALL PROVIDE A SCREENING EVALUATION FOR A BRAIN INJURY FOR ALL OFFENDERS AT ONE CORRECTIONAL INSTITUTION.

(2) NOTWITHSTANDING SECTION 24-1-136 (1)(a)(I) TO THE CONTRARY, ON OR BEFORE JANUARY 1, 2022, AND EACH JANUARY 1 THEREAFTER, THE DEPARTMENT SHALL SUBMIT A REPORT TO THE JUDICIARY COMMITTEES OF THE SENATE AND THE HOUSE OF REPRESENTATIVES, OR ANY SUCCESSOR COMMITTEES, REGARDING THE IMPLEMENTATION OF THE PILOT PROGRAM. THE REPORT MUST INCLUDE, IF AVAILABLE:

(a) BEST PRACTICES FOR SCREENING INDIVIDUALS FOR A BRAIN INJURY UPON INTAKE AND REENTRY;

(b) BEST PRACTICES FOR TRAINING STAFF ON THE SYMPTOMS AND SIGNIFICANCE OF A BRAIN INJURY;

(c) BEST PRACTICES FOR PROVIDING THE SERVICES DESCRIBED IN SECTION 26-1-304 WITHIN THE CRIMINAL JUSTICE SYSTEM TO INDIVIDUALS WHO SCREEN POSITIVE FOR A BRAIN INJURY;

(d) BEST PRACTICES FOR PROVIDING ACCOMMODATIONS WITHIN THE CRIMINAL JUSTICE SYSTEM TO INDIVIDUALS WHO SCREEN POSITIVE FOR A BRAIN INJURY; AND

(e) IDENTIFICATION OR RECOMMENDATION OF ADDITIONAL SERVICES THAT MAY BE NECESSARY TO SUPPORT INDIVIDUALS IN THE CRIMINAL JUSTICE SYSTEM WHO SCREEN POSITIVE FOR A BRAIN INJURY.

(3) THE DEPARTMENT MAY CONTRACT WITH MEDICAL OR BEHAVIORAL HEALTH PROFESSIONALS TO ADMINISTER BRAIN INJURY SCREENINGS AND DELIVER THE SERVICES DESCRIBED IN SECTION 26-1-304.

(4) THIS SECTION IS REPEALED, EFFECTIVE JUNE 30, 2026.

SECTION 4. In Colorado Revised Statutes, **add** 26-1-312 as follows:

26-1-312. Brain injury support in the criminal justice system task force - duties - membership - report - repeal. (1) THERE IS CREATED IN THE STATE DEPARTMENT THE BRAIN INJURY SUPPORT IN THE CRIMINAL JUSTICE SYSTEM TASK FORCE, REFERRED TO IN THIS SECTION AS THE "TASK FORCE". BY AUGUST 1, 2021, THE BOARD SHALL CONVENE THE TASK FORCE TO DEVELOP A PLAN TO INTEGRATE INTO THE CRIMINAL JUSTICE SYSTEM A MODEL TO IDENTIFY AND SUPPORT INDIVIDUALS WITH A BRAIN INJURY WHO ARE IN THE CRIMINAL JUSTICE SYSTEM. THE TASK FORCE MUST MEET AT LEAST FOUR TIMES TO DEVELOP THE PLAN. AT A

MINIMUM, THE PLAN MUST INCLUDE:

(a) THE BRAIN INJURY TRAINING REQUIREMENTS FOR CRIMINAL JUSTICE PROFESSIONALS;

(b) THE CRIMINAL JUSTICE PROFESSIONALS WHO WOULD BENEFIT FROM BRAIN INJURY TRAINING;

(c) THE NECESSARY TRAINING REQUIRED FOR MENTAL HEALTH PROFESSIONALS PROVIDING SCREENINGS AND SUPPORT TO INDIVIDUALS WHO ARE IN THE CRIMINAL JUSTICE SYSTEM;

(d) POLICIES AND PROCEDURES FOR PERFORMING BRAIN INJURY SCREENINGS FOR INDIVIDUALS WHO ARE IN THE CRIMINAL JUSTICE SYSTEM;

(e) POLICIES AND PROCEDURES FOR SUPPORTING INDIVIDUALS WHO SCREEN POSITIVE FOR A BRAIN INJURY, INCLUDING:

(I) IDENTIFICATION OF SYMPTOMS TO DETERMINE DEFICITS AND APPROPRIATE INDIVIDUAL SUPPORT STRATEGIES;

(II) REFERRAL TO A NEUROPSYCHOLOGICAL ASSESSMENT, IF NECESSARY;

(III) IMPLEMENTATION OF ACCOMMODATIONS, AS NECESSARY; AND

(IV) REFERRAL TO APPROPRIATE BRAIN INJURY SERVICES OUTSIDE OF THE CRIMINAL JUSTICE SYSTEM UPON THE INDIVIDUAL'S RELEASE; AND

(f) IDENTIFICATION OF NECESSARY CONTRACTS BETWEEN VARIOUS ENTITIES TO IMPLEMENT THE RECOMMENDATIONS IN THE PLAN.

(2) THE BOARD MUST APPOINT THE FOLLOWING MEMBERS TO SERVE ON THE TASK FORCE:

(a) THE DIRECTOR OF THE PROGRAM, OR HIS OR HER DESIGNEE;

(b) THE DIRECTOR OF THE DIVISION OF PROBATION SERVICES IN THE JUDICIAL DEPARTMENT, OR HIS OR HER DESIGNEE;

(c) THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF CORRECTIONS, OR HIS OR HER DESIGNEE;

(d) THE STATE PUBLIC DEFENDER, OR HIS OR HER DESIGNEE;

(e) THE DIRECTOR OF THE OFFICE OF COMMUNITY CORRECTIONS IN THE DIVISION OF CRIMINAL JUSTICE IN THE DEPARTMENT OF PUBLIC SAFETY, OR HIS OR HER DESIGNEE;

(f) A SHERIFF OR JAIL ADMINISTRATOR;

(g) A MEMBER OF THE BOARD, OR HIS OR HER DESIGNEE;

(h) A MEMBER OF A CRIMINAL JUSTICE ADVOCACY ORGANIZATION;

(i) AN EXPERT IN THE RESEARCH AND EVALUATION OF BRAIN INJURIES IN THE CRIMINAL JUSTICE SYSTEM;

(j) TWO MEMBERS WHO REPRESENT AN ORGANIZATION SPECIALIZING IN DELIVERING BRAIN INJURY SERVICES; AND

(k) TWO MEMBERS WHO EXPERIENCED A BRAIN INJURY AND HAVE BEEN INVOLVED IN THE CRIMINAL JUSTICE SYSTEM.

(3) TASK FORCE MEMBERS SERVE ON A VOLUNTARY BASIS WITHOUT COMPENSATION, BUT ARE ENTITLED TO COMPENSATION FOR ACTUAL AND NECESSARY EXPENSES INCURRED IN THE PERFORMANCE OF THE MEMBER'S DUTIES.

(4) BY JANUARY 1, 2022, THE TASK FORCE SHALL SUBMIT THE PLAN TO THE JUDICIARY COMMITTEES OF THE SENATE AND THE HOUSE OF REPRESENTATIVES, OR ANY SUCCESSOR COMMITTEES.

(5) THIS SECTION IS REPEALED, EFFECTIVE JUNE 30, 2024.

SECTION 5. Appropriation. (1) For the 2021-22 state fiscal year, \$144,409 is appropriated to the department of corrections. This appropriation is from the general fund. To implement this act, the department may use this appropriation as follows:

(a) \$1,450 for use by institutions for operating expenses related to the superintendents subprogram;

(b) \$62,859 for use by institutions for personal services related to the mental health subprogram, which amount is based on an assumption that the department will require an additional 0.9 FTE;

(c) \$9,250 for use by institutions for operating expenses related to the mental health subprogram;

(d) \$70,000 for use by institutions for medical contract services related to the mental health subprogram;

(e) \$450 for use by support services for operating expenses related to the communications subprogram; and

(f) \$400 for use by support services for operating expenses related to the information systems subprogram.

SECTION 6. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety.

Approved: July 6, 2021